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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,803

02/16/2005

Takaaki Kishigami

MAT-8669US

1028

23122 7590 10/01/2009  
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EXAMINER

TRAN, THINH D

ART UNIT

PAPER NUMBER

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/524,803</p>	<p><b>Applicant(s)</b> KISHIGAMI ET AL.</p>	
	<p><b>Examiner</b> THINH D. TRAN</p>	<p><b>Art Unit</b> 2419</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Daniel J. Ryman/  
Supervisory Patent Examiner, Art Unit 2419

Continuation of 3. NOTE: Applicant's amendments to the claims 31, 32, 34, 35, 42, and 43 change the scope of the claims. Therefore, to make a proper patentability determination further search and/or consideration is required.

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant argument in pages 5-7, the applicant asserts that "Applicants' claim 29, is different than the art of record because SDM evaluation criterion and SDMA evaluation criterion are calculated dependent upon channel estimation and received quality ("...wherein the SDM transmission evaluation criterion and the SDMA evaluation criterion are to be calculated depending upon a channel estimation value and received quality received from the SDM compatible mobile station and the SDM mobile station within the communication area..." However, the examiner respectfully disagrees since as indicate by the final rejection of claim 29, ALASTALO in par. 57 and par. 58 teaches the access point determine whether space division multiple access technology can be applied for each terminal, whether the terminal can be served simultaneously with one or more other terminals, which can use the spatial signatures (channel estimation value) using a criterion (SDMA evaluation criterion) to determine if the mobile station is SDMA compatible. Therefore, it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement the determining of the mobile station is SDMA compatible based on the SMDA evaluation criterion are to be calculated depending upon a channel estimation value as taught by ALASTALO in the system of ONGGOSANUS. The motivation would have been to prevent reduce interference and provide more efficient communication resource (see ALASTALO par. 9).

and secondly in WALLACE, specifically in par. 105, teaches "...Typically SIMO operation implies that the receiver is able to operate at a lower Eb/No (signal to noise ratio) for higher data rates..." Therefore, it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement the receiving of the Eb/No (signal to noise ratio) as channel quality of given link as in WALLACE par. 104 and using the Eb/No to provide a criterion to determine whether the mobile station is SDM compatible or not in the system of ONGGOSANUS. the motivation would have been to provide high-quality, efficient communication in mixed mode system (see WALLACE par. 6).